UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/29/Add.4
29 July 1997

Original: ENGLISH

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1995

Addendum

NEW ZEALAND

[25 February 1997]

CONTENTS

	Paragraphs	Page
Introduction	1 - 2	3
I. SUMMARY OF KEY DEVELOPMENTS	3 - 4	3
II. INFORMATION ON NEW MEASURES AND DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION	5 - 29	4
Article 3	6 - 7	4
Article 8	8	4
Article 9	9	4

* The initial report submitted by the Government of New Zealand is contained in document CAT/C/12/Add.2; for its consideration by the Committee, see documents CAT/C/SR.126 and 127 and Add.2, and Official Records of the General Assembly, Forty-eighth Session, Supplement No. 44 (A/48/44), paras. 133-160.

GE.97-17782 (E)

CONTENTS (continued)

	Paragraphs	Page
II. INFORMATION ON NEW MEASURES AND DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION (continued)		
Article 10	10 - 13	5
Article 11	14 - 15	6
Article 12	16 - 24	7
Article 13	25 - 26	11
Article 14	27 - 28	11
Tokelau	29	12
III. INFORMATION REQUESTED BY THE COMMITTEE	30 - 40	12
List of annexes		16

Introduction

1. Following is New Zealand's first supplementary report to the Committee against Torture submitted in accordance with article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This report covers the review period 9 January 1991 to 8 January 1995, although reference is made to more recent developments where appropriate. It deals with new measures which give effect to the provisions of the Convention and other relevant developments. It also addresses issues raised by the Committee against Torture in its consideration of New Zealand's initial report.

2. This report supplements and should be read in conjunction with New Zealand's initial report submitted in July 1992 (CAT/C/12/Add.2) and the consideration of that initial report by the Committee in November 1992 and February 1993 (CAT/C/SR.126, CAT/C/SR.127 and CAT/C/SR.127/Add.2). Reference should also be made to the core document of New Zealand (HRI/CORE/1/Add.33) submitted on 28 September 1993 in accordance with the guidelines contained in document HRI/CORE/1.

I. SUMMARY OF KEY DEVELOPMENTS

3. New Zealand's initial report outlined the legislative, judicial, administrative and other measures existing in New Zealand which gave effect to the provisions of the Convention. The framework outlined in the initial report remained substantially in place. Where key legislative and regulatory developments have occurred, they are summarized below (with reference to the relevant article of the Convention against Torture) and outlined in detail in Parts II and III of the report. Those developments are:

(a) The proposal of legislation to simplify processes involved in arranging extradition between New Zealand and other countries (art. 8);

(b) The passage into law of the Mutual Assistance in Criminal Matters Act 1992 (art. 9);

(c) The revision of training procedures for prison officers relating to the prohibition against torture (art. 10);

(d) The development of standards for community-based residential services with the objective of safeguarding children in care (art. 10);

(e) The passage into law of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (arts. 10, 11, 12, 13);

(f) The passage into law of the Accident Rehabilitation and Compensation Insurance Act 1992 (art. 14);

(g) The passage into law of the Health and Disability Commissioner Act 1994 (arts. 10, 12, 13);

(h) The decision of the Court of Appeal in Simpson v. Attorney-General [1994] 3 NZLR 667, which recognized the ability of individuals to seek compensation directly from the State for breach of the individual's rights under the New Zealand Bill of Rights Act 1990 (art. 14).

4. In the period under review, no one has been convicted or charged with committing an act of torture in New Zealand as the term "torture" is defined under the Convention. As at January 1995, a police investigation was continuing into complaints by prisoners at a New Zealand prison alleging assault by prison officers. The complaints and follow-up are detailed in Part II of the report.

II. INFORMATION ON NEW MEASURES AND DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION

5. The information supplied in New Zealand's initial report still applies in full with reference to articles 2, 4, 5, 6 and 7.

Article 3

6. Some procedural changes have been made to the refugee status application process outlined in New Zealand's initial report (para. 3.3). The Refugee Status Branch of the Immigration Service now undertakes initial determination of applications. The Refugee Status Appeals Authority remains in place with an independent lawyer as the professional chair. Other members, including independent lawyers and judges hold part-time and full-time positions. The Canberra office of the Office of the United Nations High Commissioner for Refugees (UNHCR) periodically sends representatives to Authority hearings.

7. This change from an interdepartmental part-time authority to a dedicated staff led to improved independence, transparency of process and efficiency. Therefore, there were better procedures for dealing with the increased number of refugee applications being made.

Article 8

8. The need to review New Zealand's extradition legislation has been recognized for some time. The previous Government had given approval to the inclusion of an extradition bill on the 1996 legislative programme. However, future work on an extradition bill will now be dependent on the new Government. If enacted, the bill would simplify the processes involved in arranging extradition between New Zealand and other countries, both Commonwealth and non-Commonwealth. In particular, procedures for establishing extradition relationships with non-Commonwealth countries would be streamlined by allowing such relationships to be established without a treaty, or by way of simple treaty.

Article 9

9. New Zealand's initial report (para. 9.1) foreshadowed the passage of a draft bill on mutual assistance in criminal matters. It was passed into law as the Mutual Assistance in Criminal Matters Act 1992. That Act provides a legislative basis for New Zealand to enter into arrangements with other

parties from which New Zealand can request and to which it can provide assistance specifically in relation to criminal matters. These matters include investigations, proceedings, and the issuing and enforcement of orders relating to the proceeds of crime. Information relevant to investigations into offences referred to in article 4 of the Convention is covered by the Mutual Assistance in Criminal Matters Act 1992. That legislation provides for requests for mutual assistance from countries which are prescribed under that Act by Order in Council. Prescription is usually preceded by the negotiation of a Mutual Assistance Treaty, although this is not essential.

Article 10

Penal institutions

10. As foreshadowed in New Zealand's initial report (para. 10.3), the prison officer training manuals have been revised and now include specific reference to the prohibition of acts of torture. The compulsory training course for all probationary prison officers now covers the prohibition on torture, in the context of the Crimes of Torture Act 1989. A further module relating to Acts and Regulations, which is part of optional continuing education for prison officers, also covers the prohibition on torture. These courses are conducted by the New Zealand Corrections Staff College.

Children and young persons

11. Further developments have been made in the area of protection and treatment of children and young persons in the care of the State as outlined in New Zealand's initial report (para. 10.5 and 10.6). The Department of Social Welfare now operates five residences nationally. These reflect the requirements of the Children, Young Persons, and Their Families Act 1989 and the Department of Social Welfare's Residential Strategy, that residential care should be considered only as the option of last resort in the placement of children and young persons who have offended, or are in need of care or protection. Moreover, residential care is an option only in cases where parent(s) and family(ies) are unable, or have been deemed unable, to meet the care or control needs of their children or young persons. Two of the five residences operated by the Department provide both care and protection, and youth justice programmes. Two residences provide youth justice programmes only, and one a care and protection programme only. (In accordance with the Department's Residential Strategy, all care and protection facilities are being separated from youth justice facilities.)

12. Standards for the approval of community-based residential services have been developed by the New Zealand Community Funding Agency (the funding and contracting agency for the Department of Social Welfare). The objective is to safeguard children in care. The standards cover child and family support services and set out specific requirements for community providers of overnight care for children. They include the need for community providers to:

(a) Provide care to children in a safe, age-appropriate and family-like setting. Children's physical, social, emotional, psychological, cultural, health, educational and recreational needs must be adequately catered for. Children must be kept safe from risk or harm and from emotional, sexual or physical abuse;

(b) Care for children or young persons in an environment where no corporal, physical or emotional punishment is to be administered;

(c) Vet potential caregivers and staff, and ask any person involved in service delivery to sign a declaration fully stating any criminal convictions;

(d) Set out a clearly understood grievance procedure and policy to deal with complaints and reported/suspected abuse, neglect or ill-treatment of any child or young person in care;

(e) Provide a safe physical environment.

Medical professionals

13. During the reporting period the Mental Health Act 1969 outlined in New Zealand's initial report (para. 10.9) has been repealed and replaced by the Mental Health (Compulsory Assessment and Treatment) Act 1992. Under the new Act it continues to be an offence for a person concerned with the care, oversight and control of mentally disordered people to neglect or ill-treat them. The offences are punishable on summary conviction by way of a fine. In addition, mistreatment of medical patients can be the subject of a complaint to the newly established Health and Disability Commissioner whose impartial investigation can lead to public reports, revocation of professional registration, or monetary fines.

Article 11

14. Further to information contained in New Zealand's initial report (para. 11.3), only a Department of Social Welfare residence can operate a secure care or custody unit for the detention of children and young persons. Admission of children and young persons to "secure" detention is tightly controlled. Children and young persons can only be admitted to resident secure units for two reasons. The first is that their behaviour is a threat to themselves and/or others. The second is that there are grounds to believe that they are likely to abscond. In all cases, a child or young person can only be admitted to the secure unit with the approval of either a senior residential social worker or the residence manager. The police and courts do not have the statutory authority to order a child or young person placed in secure care, but they are able to make recommendations to that effect. Detention of a child or young person in secure care cannot exceed 72 hours. Where the Department wishes to detain a child or young person in secure care for longer, it must make special application to either the Family Court or the Youth Court (depending on the age of the defendant and the nature of the case) for approval. If the Court is satisfied with the evidence provided by the Department in support of its application, the Court is then able to approve

the child's or young person's continued detention in secure care for a maximum of 14 days. All placements in secure care are subject to 24-hour reviews by senior residential social workers.

15. The care of a person who is held involuntarily because it has been found that he or she is mentally disordered, is now regulated by the Mental Health (Compulsory Assessment and Treatment) Act 1992 (see para. 13 above), replacing the provisions outlined in New Zealand's initial report (para. 11.4). That Act provides for the assessment and treatment of patients and for the regular review of their condition and legal status. The first part of that system involves the regular clinical review of the patient's condition by the responsible clinician in consultation with other health professionals concerned with the case. The clinical review must be conducted no later than three months after the date of the compulsory treatment order and, after that, at intervals of no more than six months. Where a patient who is subject to a compulsory treatment order is considered fit to be released as a result of a clinical review, he or she must be released from compulsory status immediately. If the patient is not fit to be released, he or she (or specified others acting on the patient's behalf) may apply to the Review Tribunal for a review of the patient's legal status. Where the Tribunal does not consider that the patient is fit to be released, an appeal may be made to the District Court for a review of the Tribunal's decision. A patient's responsible clinician may release the patient from compulsory assessment or treatment at any time.

Article 12

Penal institutions

16. In January 1993, the Inspectorate of the Penal Division of the Department of Justice received allegations of abuse by seven prison inmates against several staff members at a penal institution, Mangaroa Prison. It was alleged that inmates had been beaten by prison officers with fists and boots and denied medical attention, food and shelter.

17. As a result of these complaints by inmates, the following steps were taken:

(a) A firm of private investigators was contracted to carry out an inquiry into the incidents;

(b) A number of prison officers were suspended pending disciplinary proceedings. Subsequent disciplinary charges resulted in disciplinary action, including dismissal, against those prison officers involved;

(c) The Minister of Justice commissioned a ministerial inquiry into management practices at Mangaroa Prison. It focused on factors which may have contributed to the occurrence of staff misconduct, and on making recommendations on any matters which may prevent similar incidents in the future, either at Mangaroa Prison or at other institutions. (The inquiry was not to be an investigation of the incidents themselves - this was undertaken

by the police as outlined below.) The resulting report - the Logan Report - was published in July 1993, and many of its recommendations have been, or are in the process of being implemented;

(d) The Department of Justice requested the views of the Human Rights Commission on the Government's responsibilities under the Convention, in light of the incidents at Mangaroa;

(e) The matter was subsequently referred by the Department of Justice to the police. The police inquiry was directed at attempting to find sufficient evidence to recommend to the Solicitor General that one or more officers be investigated under the Crimes of Torture Act 1989. As of 8 January 1995, the investigation was still ongoing.

18. The inquiry ordered by the Minister of Justice into practices at Mangaroa Prison looked at the possible causes of misconduct, organization and staffing issues, and management strategies and practices. The resulting Logan Report made a number of specific recommendations in relation to the prison, as well as more general recommendations relating to the reform of the New Zealand penal system.

19. The specific recommendations for Mangaroa Prison have been implemented in the following ways:

(a) The appointment of a human resources manager;

(b) Improving communications in the prison management team through the development of a prison management plan to integrate the tasks of daily prison management;

(c) Beginning remedial training for staff to correct identified problems by conducting skills assessments and regular in-house training. A skills development programme is being developed and regular ongoing training will continue;

(d) Training in supervision and leadership skills for supervisory staff, as well as training in performance assessment, coaching and counselling skills;

(e) The establishment of a bicultural development plan for prison staff and inmates;

(f) Removing physical partitions within the prison to facilitate better access, communication, and inmate-staff and inmate-inmate interaction.

20. Although the primary focus of the inquiry was on Mangaroa Prison, the report also made a number of recommendations of general applicability to all prisons. These recommendations aim to consolidate and enhance the strategic reform of the prison system (which the Penal Division of the Department of Justice had begun in 1989), and to prevent incidents, such as the alleged misconduct outlined above, occurring in the future.

21. The following summarizes the major recommendations and any action taken to implement them during the review period:

(a) Fair procedures for both inmates and staff to resolve allegations of misconduct:

(i) Establish an independent Prison Complaints Authority to receive complaints from inmates of alleged misconduct and neglect of duty by prison staff, to investigate those complaints, and to make recommendations to the Secretary of Justice and report to Parliament. The Government has agreed to establish a discrete unit within the Office of the Ombudsman to deal with prison inmate complaints,

(ii) Restructure the prison inspectorate to comprise trained inspectors operating from the Criminal Justice Development Unit of the Department of Justice, and reporting directly to the Secretary for Justice. The inspectorate now exists in the recommended form. The Corrections Operations Division of the Department of Justice, which is responsible for prisons, developed an internal auditing group known as Correctional Audit Services. Pursuant to the provisions of Penal Institutions Act 1954, the powers and functions of inspectors include the following:

(a) to visit any penal institution from time to time to interview any inmate;

(b) to examine the treatment and conduct of inmates;

(c) to hear any complaint made by an inmate;

(d) to inquire into all abuses or alleged abuses within the institution or in connection with it;

(e) to inquire into any matter referred by the Secretary for Justice;

(f) for any of the above purposes, to take evidence on oath or otherwise; and

(g) to report in writing to the Secretary for Justice on any of these matters or on other matters relating to penal institutions;

(iii) Redefine the role of Visiting Justices in disciplinary proceedings. District Court Judges, rather than Justices of the Peace, now generally conduct hearings against inmates charged with serious misconduct. New national guidelines and requirements governing inmate rights and disciplinary procedures have been published and are available to inmates;

(iv) The Justice Department reinforced the status of inmate rights by sending formal reminders to all prison management, and strengthening the requirements in General Managers' personal performance plans to emphasize that inmate privileges cannot be withdrawn as a punishment for an alleged infraction without a disciplinary hearing;

(v) Establish a clear, and auditable, document-trail in prison administration to facilitate any investigation, audit, or review. An inmate complaints registration system and new procedures have been developed;

(vi) The Justice Department now provides greater assistance regarding inmates' rights by providing more information to inmates. On induction inmates are given a booklet explaining their rights and newssheets on relevant issues are distributed. Staff give advice on procedural matters to those inmates facing internal disciplinary proceedings;

(vii) Modifications have been made to procedures for controlling and restraining violent and uncooperative inmates. The new instructions emphasize the use of negotiating techniques as the preferred approach, with physical restraint considered only as a last resort;

(b) Staff Development. The importance of revising recruitment procedures and improving the expertise of selectors through skills training was identified. The initial prison officer training programme is being reviewed and a new programme in line with the Logan Report's recommendations was implemented early in 1995 (see paragraph 10 regarding incorporation of the prohibition against torture in training modules).

22. Some months after the incidents at Mangaroa Prison, allegations were made that prison officers at Wellington Prison had assaulted inmates. The Department of Justice engaged a firm of private investigators to carry out an inquiry, which concluded by recommending that the allegations merited further investigation. A Department of Justice review team then undertook a comprehensive investigation, which resulted in disciplinary action being taken against nine officers.

Psychiatric hospitals

23. The enactment of the Mental Health (Compulsory Assessment and Treatment) Act 1992 amends the procedures for dealing with complaints by patients in psychiatric hospitals outlined in New Zealand's initial report (para. 13.3). Under that Act, district inspectors or official visitors are appointed to investigate complaints. Every patient is seen by a district inspector or official visitor at least twice during the assessment phase and after clinical reviews. Where a complaint has substance, the district inspector or official visitor shall report the matter to the Director of Area Mental Health Services. The Director must take necessary steps to remedy the matter. If the patient is not satisfied with the outcome of the investigation, he or she may have the matter reviewed by the Review Tribunal.

24. The enactment of the Health and Disability Commissioner Act 1994 establishes another independent process for the investigation of alleged mistreatment or abuse of patients being held under a mental health compulsory assessment or treatment order. This Act requires the Health and Disability Commissioner to create a Code of Health and Disability Services Consumers' Rights which must be complied with whenever health and disability services are being delivered to the public or an individual. The Act requires the Code to include the right to appropriate standards of service and the principles of informed consent to medical treatment. An act of torture or other cruel, inhuman or degrading treatment that occurs during the provision of health or disability services would clearly constitute a breach of the Code of Health and Disability Services Consumers' Rights.

Article 13

25. District inspectors (who are lawyers) and official visitors appointed under the Mental Health (Compulsory Assessment and Treatment) Act 1992, have the power to investigate complaints from patients using mental health services as noted above (para. 23).

26. The Health and Disability Commissioner is also required to promote and enforce the Code of Health and Disability Services Consumers' Rights by receiving complaints about medical professionals and organizations. The Commissioner is required to conduct impartial investigations, arrange mediations and refer situations to a Director of Proceedings. The Director of Proceedings can then take action in the relevant professional registration body or the Complaints Review Tribunal. These actions can lead to various sanctions including the medical professionals losing their licence to practice in New Zealand, and monetary fines to compensate the aggrieved individual. If the Director of Proceedings refuses to conduct such actions, the legislation allows the aggrieved individual to initiate these actions personally. While District inspectors will continue to assist persons being treated under the Mental Health Act, the role of official visitors is currently under review as a result of the Health and Disability Commissioner Act 1994.

Article 14

27. As foreshadowed in New Zealand's initial report (para. 14.1), the Accident Compensation Act 1982 has been replaced by the Accident, Rehabilitation and Compensation Insurance Act 1992. This new legislation now provides compensation through the Accident Rehabilitation and Compensation Insurance (ARCI) scheme which is administered by a Crown entity (the Accident Rehabilitation and Compensation Insurance Corporation). Under the new scheme, persons who suffer personal injury by accident (including torture) can still obtain compensation for ordinary damages, medical treatment, rehabilitation and other forms of assistance. Emotional and mental harm is also covered by the ARCI scheme when it is an outcome of physical injury suffered by the person claiming assistance.

28. Although the statements made in paragraphs 14.3 and 14.4 of New Zealand's initial report continue to represent the situation under the Crimes of Torture Act 1989, developments in the judicial interpretation of the New Zealand Bill of Rights Act 1990 will be of interest to the Committee.

In 1994 the New Zealand Court of Appeal (Simpson v. Attorney-General [1994] 3 NZLR 667) accepted the possibility of a monetary damages claim against the Crown for a breach of the Bill of Rights Act. These monetary damages were designed to compensate an individual whose rights (under the Bill of Rights Act) were breached by a public servant or State official. Accordingly, it has now been established by the Court of Appeal's decision that if an individual's rights are breached by a State servant, and the courts have no other sufficient remedy to rectify the breach, the aggrieved individual can take a court action against the Attorney-General (as representative of the Crown) for monetary compensation. Given that section 9 of the Bill of Rights Act provides that "everyone has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment", there is now the further possibility that an individual can be compensated for suffering such treatment by taking an action based on the Bill of Rights Act.

Tokelau

29. A new crime regulation system, and related procedures, was under development for Tokelau during the review period. The existing code is being modified to ensure consistency with Tokelau's obligations under international law concerning human rights issues. The new code is being developed in close consultation with Tokelau elders to ensure that it reflects Tokelauan needs, is consistent with Tokelauan custom and is determined by what is appropriate for Tokelau.

III. INFORMATION REQUESTED BY THE COMMITTEE

30. The information requested by the Committee during its consideration of New Zealand's initial report was provided during the discussion of the initial report or has been presented in Part II of this report. Where necessary, additional information and elaboration is supplied below. In particular, the Committee may wish to note the following in relation to its concluding comments on New Zealand's initial report:

(a) The Committee's concerns about the application of articles 8 and 9 of the Convention are being addressed by the planned legislation on extradition, and the passage of the Mutual Assistance in Criminal Matters Act 1992 (see paras. 8 and 9 of this report);

(b) Further information on New Zealand's reservation to article 14 is provided (see paragraphs 35-37 of this report).

31. With reference to the Committee's question regarding sentencing under the Crimes of Torture Act 1989, the following should be noted: There have been no prosecutions under the Crimes of Torture Act 1989. The offences of torture outlined in section 3 of that Act attract maximum penalties of 14 and 10 years' imprisonment, respectively. Therefore, if a person were to be successfully prosecuted his or her sentence would be set at the discretion of the judge having regard to the prescribed statutory maximum sentence, the principles of sentencing set out in the Criminal Justice Act 1995 and case law precedent. Because imprisonment is the prescribed maximum penalty it would be open to the judge to consider the full range of sentencing options available

under the Criminal Justice Act 1995. However, if the offence was one involving violence the statutory presumption in section 6 of that Act would favour the imposition of a full-time custodial sentence.

32. With reference to questions asked by members of the Committee relating to the Police Complaints Authority, the following should be noted: The avenues for complaints of torture relating to the actions of a police officer are the Police Complaints Authority and the New Zealand Police itself. Any complaints relating to alleged criminal actions by members of the police are taken very seriously and investigated with a view to prosecution. The fact that the Police Complaints Authority can choose to take no action where the complainant has knowledge of the matters under complaint for more than 12 months is not a statute of limitations. The Authority has discretion to decide to take no action in a range of circumstances where the complaint is trivial, frivolous, vexatious or not made in good faith. Whenever the Authority decides to take no action under this section it must inform the complainant of that decision and the reasons for it. Serious criminal offences such as those in the Crimes of Torture Act 1989 have no limitation period.

33. With reference to the Committee's question regarding the minimum age of prosecution under the Crimes of Torture Act 1989, the following should be noted: Under section 21 of the Crimes Act 1961 a child under the age of 10 is not criminally responsible and cannot be convicted of an offence. Under section 22 of that Act a child between the ages of 10 and 14 cannot be convicted of an offence unless he or she knew that his or her actions were wrong or contrary to the law. Section 272 (1) of the Children, Young Persons and Their Families Act 1989 (CYP&F Act 1989) states that criminal proceedings shall not be commenced against a child between the ages of 10 and 14 except when the child is alleged to have committed murder or manslaughter. Under the CYP&F Act 1989 a person aged 14 to 16 years who is not married is defined as a young person. Young persons may be prosecuted for criminal offences. As a general rule, however, their offending will be dealt with in the Youth Court in accordance with the provisions of the CYP&F Act 1989. Persons aged 17 years and above who commit an offence come within the jurisdiction of the District or High Court depending on the gravity of the offence committed.

34. With reference to the Committee's question regarding training for judges and lawyers, the following should be noted: In general, lawyers and judges do not receive compulsory training regarding the prohibition of torture, although the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment may be included in the curricula of some courses in international law and criminal law.

35. With reference to the Committee's questions regarding compensation for victims of torture, the following additional explanation is offered: where criminal proceedings have been instituted in relation to an offence committed under the Crimes of Torture Act 1989 a wide range of options are available to the court under the Criminal Justice Act 1985 in sentencing the offender. These include the imposition of a sentence of reparation under section 22 of that Act in any situation where the court is satisfied that any other person

suffered loss or damage to property or emotional harm. Section 11 of that Act requires the court to consider imposing a sentence of reparation in all cases unless it would be clearly inappropriate to do so.

36. Like the 1982 legislation (discussed in paragraph 14.1 of New Zealand's initial report) the 1992 ARCI scheme removes the right to lodge a civil claim for damages in a case of personal injury. However, the scheme does allow a victim to bring a civil claim for exemplary or punitive damages in addition to any claim under that ARCI. It may also be possible for a victim of torture to claim ordinary damages for false imprisonment. In both these civil claims, it is the person or persons responsible for the torture or cruel punishment who will be obliged to compensate the aggrieved individual.

37. Apart from the compensation available to the aggrieved individual under section 22 of the Criminal Justice Act, the ARCI scheme, or a civil court action for exemplary damages or false imprisonment, section 5 of the Crimes of Torture Act allows the Attorney-General a discretion to grant the victim compensation from the Crown. This compensation is possible regardless of whether the Crown was responsible for the acts committed or not. It is noted that the Attorney-General's discretion as specified in New Zealand's reservation to the Convention, and illustrated in section 5 of the Crimes of Torture Act, attracted concern from members of the Committee when discussing New Zealand's initial report. However, the New Zealand Court of Appeal's decision in Simpson v. the Attorney-General now allows a person whose rights (under the New Zealand Bill of Rights Act) were breached by a public servant to take a court action against the Crown for monetary compensation. Such an action means that the aggrieved individual does not have to rely simply on the Attorney-General's discretion to grant compensation. The courts are now able to directly award compensation to persons who have suffered torture or abuse at the hands of a public servant.

38. With reference to the Committee's questions regarding provision for refugees who have been victims of torture outside New Zealand, the following should be noted: New Zealand's refugee policy has meant that the Government has in effect undertaken a level of responsibility for families and children who may have suffered or are currently suffering the effects of torture occurring outside New Zealand. There are currently 16,000-20,000 refugees in New Zealand. The Department of Social Welfare purchases a number of support services, through the New Zealand Community Funding Agency, for which refugees are eligible. These services include community work and community development services. Assistance has been provided to aid the publication of "link" newspapers, an example of a more holistic approach to resettlement. The Department of Social Welfare also has an advocacy role for refugees as it does for Maori, women, youth, the aged, and other "disadvantaged" groups with special needs.

39. The Department of Social Welfare is also responsible for the administration of income support for refugees. As most statutory social service benefits in New Zealand require prior residence, people who are refugees will not usually qualify for services such as the Unemployment or Domestic Purposes Benefits until they have been resident in New Zealand for a required period of time, often a period of some years. If correct procedure is followed, however, these prior residence requirements may be waived and an

Emergency Benefit granted. This form of benefit will normally provide the same rates and conditions (excepting residence requirements) as apply to New Zealand residents.

40. Similarly, public health care would be available to most asylum-seekers, including those who have suffered torture, while they are going through the refugee application process. Such people would not, however, be able to access entitlements under the ARCI scheme that relate to their pre-existing injuries. Under the Accident Rehabilitation and Compensation Insurance Act 1992, cover for personal injury by accident is available only for injury that occurs in New Zealand or to a person who is ordinarily resident in New Zealand while he/she is overseas.

List of annexes*

STATUTES

1. Accident Rehabilitation and Compensation Insurance Act 1992

2. Children, Young Persons and their Families Act 1989

3. Health and Disability Commissioner Act 1994

4. Mental Health (Compulsory Assessment and Treatment) Act 1992

5. Mutual Assistance in Criminal Matters Act 1992

REPORTS

6. Ministerial Inquiry into Management Practices at Mangaroa Prison

ADMINISTRATIVE PROCEDURES

7. Corrections Staff College Probationary Prison Officers' Course Outline: Acts and Regulations - Crimes of Torture Act (inter alia)

8. Corrections Staff College Intermediate Acts and Regulations Course: Module 5 - Crimes of Torture Act 1989

CASES

9. Simpson v. Attorney-General [1994] 3 NZLR 667

---

* The annexes are available for consultation in the files of the United Nations Centre for Human Rights.